

Windham Community Memorial Hospital and Hatch Hospital Corporation and Federation of Nurses and Health Professionals, CSFT, AFT, AFL-CIO, Petitioner. Case 34-RC-1127¹

September 10, 1993

DECISION AND DIRECTION

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

The National Labor Relations Board has considered a determinative challenge in an election held January 14, 1993, and the Regional Director's report and recommendation on its disposition.² The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 53 ballots were cast, of which 24 were for the Petitioner, 25 were against the Petitioner, and 4 were challenged.

The Board has reviewed the record in light of the exception and brief, and has decided to affirm the Regional Director's findings and recommendations only to the extent consistent with the Decision and Direction.

The central issue in this case is whether Jack Boyko met the requirements of the parties' eligibility stipulation. The Regional Director found that Boyko did not do so and, therefore, recommended sustaining the challenge to his ballot. The Petitioner argues that, Boyko met the requirements of the stipulation. We agree. Accordingly, we shall overrule the challenge to Boyko's ballot.

The essential facts are not in dispute. The parties entered into a stipulation agreement which provided that individuals classified as per diem employees would be eligible to vote if they were regularly *scheduled* to work 16 or more hours per week in at least 6 of the 13 weeks prior to the November 21, 1992 eligibility date. In addition, at the preelection conference, the Employer and the Petitioner entered into an agreement that Boyko would be included in the unit if he were otherwise eligible to vote.

¹This proceeding was consolidated with Cases 34-RC-1128, 34-RC-1129, and 34-RC-1130. No exceptions were filed to the RD's recommendations in those cases. Accordingly an unpublished order will issue adopting those recommendations pro forma.

²In the absence of exceptions, we adopt pro forma the Regional Director's recommendations to overrule the Employer's Objections 1 and 2 and to overrule the challenges to the ballots of Margaret Andrews, Faith Brouillard, and Dennis Carter.

The work schedules for the respiratory therapy department show that Boyko was scheduled to work 16 or more hours in 8 of the 13 weeks covered by the parties' stipulation. However, the Employer's payroll records show that Boyko actually worked 16 or more hours in only 5 of the 13 weeks.

The Regional Director recommended that the Employer's challenge to Jack Boyko's ballot be sustained because Boyko actually worked 16 or more hours in only 5 of the 13 weeks covered by the stipulation. The Regional Director found that Boyko did not meet the eligibility requirements of the agreement, even though Boyko was *scheduled* to work 16 or more hours in 8 of the 13 weeks covered by the stipulation. Noting that the stipulation allows employees to vote if they were regularly scheduled to work, the Petitioner contends that Boyko's entitlement to vote is based on his status as a scheduled employee, and is not affected by his failure to work the scheduled hours. We find merit in this contention.

In cases where the parties have entered into a clear and unequivocal written stipulation agreement, the agreement is an expression of the parties' intent and if the agreement does not violate any express statutory provisions or established Board policies the Board will not override that expression of intent.³ In the instant case, the stipulation has not been shown to violate any statutory provision or established Board policy. It unequivocally provides that those employees who are scheduled for 16 more hours per week in at least 6 of the 13 weeks covered under the agreement are eligible to vote. The stipulation makes no reference to hours actually worked. The Regional Director's conclusion that Boyko is ineligible requires an interpretation that goes beyond the plain meaning of the stipulation and overrides the written expression of the parties' intent. We therefore overrule the challenge to Boyko's ballot.

DIRECTION

IT IS DIRECTED that the Regional Director for Region 34 shall, within 14 days from the date of this Decision and Direction, open and count the ballot of Jack Boyko, together with the ballots of Margaret Andrews, Faith Brouillard, and Dennis Carter, serve on all parties a revised tally of ballots, and issue the appropriate certification,

³See generally *Tribune Co.*, 190 NLRB 398 (1971).